

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DEVON EVANS,

Plaintiff,

v.

ED BRADY, *et al*,

Defendants.

Case No. C06-5428FDB-KLS

REPORT AND
RECOMMENDATION TO DENY
APPLICATION TO PROCEED *IN*
FORMA PAUPERIS

Noted for November 10, 2006

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff has filed a civil rights complaint under 42 U.S.C. § 1983 and an application to proceed *in forma pauperis*. To file a complaint and initiate legal proceedings, plaintiff must pay a filing fee of \$350.00 or file a proper application to proceed *in forma pauperis*. Because plaintiff has failed to respond to the court's order to show cause, the undersigned recommends the court deny his application.

DISCUSSION

The Court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the Court has broad discretion in denying an application to proceed *in forma pauperis*. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963).

Several district courts have ruled that denial of *in forma pauperis* status is not unreasonable when a

1 prisoner is able to pay the initial expenses required to commence a lawsuit. See Temple v. Ellerthorpe, 586
2 F.Supp. 848 (D.R.I. 1984); Braden v. Estelle, 428 F.Supp. 595 (S.D.Tex. 1977); U.S. ex rel. Irons v.
3 Com. of Pa., 407 F.Supp. 746 (M.D.Pa. 1976); Shimabuku v. Britton, 357 F.Supp. 825 (D.Kan. 1973),
4 *aff'd*, 503 F.2d 38 (10th Cir. 1974); Ward v. Werner, 61 F.R.D. 639 (M.D.Pa. 1974).

5 On August 21, 2006, the undersigned issued an order to show cause requiring plaintiff to cure
6 certain deficiencies in his application to proceed *in forma pauperis* by no later than September 21, 2006.
7 (Dkt. #4). Plaintiff also was warned that failure to timely cure those deficiencies would be deemed a
8 failure to properly prosecute and result in a recommendation that the Court dismiss this matter. To date,
9 however, plaintiff has failed to respond to the order to show cause.

10 CONCLUSION

11 Because plaintiff has failed to respond to the Court's order to show cause as discussed above, the
12 undersigned recommends the Court dismiss plaintiff's complaint unless he pays the required \$350.00 filing
13 fee **within thirty (30) days** of the Court's order.

14 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rules of Civil Procedure ("Fed. R. Civ. P.") 72(b),
15 the parties shall have ten (10) days from service of this Report and Recommendation to file written
16 objections thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those
17 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit
18 imposed by Fed. R. Civ. P. 72(b), the Clerk is directed to set this matter for consideration on **November**
19 **10, 2006**, as noted in the caption.

20 Dated this 17th day of October, 2006.

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24 Karen L. Strombom
25 United States Magistrate Judge
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